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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. ANDREAS MARVIN INATOWITZ, Defendant and Appellant.	H043055 (Monterey County Super. Ct. Nos. SS121036A, SS121332A)

On June 11, 2012, defendant Andreas Marvin Inatowitz pleaded no contest to a count of possession of methamphetamine (former Health & Saf. Code, § 11377, subd. (a)) and admitted he had served a prior prison term (Pen. Code, § 667.5) in case No. SS121036A.[1] On April 17, 2013, he pleaded no contest to two felony counts of infliction of corporal injury on a spouse or cohabitant (§ 273.5, subd. (a)), a felony count of threatening death or great bodily injury (§ 422), and admitted he had served a prior prison term (§ 667.5) in case No. SS121332A. On June 14, 2013, the trial court sentenced defendant to a total term of six years eight months for case No. SS121332A and a concurrent two-year term for case No. SS121036A.

On December 3, 2014, defendant filed a petition to have his felony conviction for possession of methamphetamine in case No. SS121036A designated as a misdemeanor under section 1170.18, subdivisions (f) and (g). Defendant also requested that the trial court reduce his overall sentence by one year by striking the prior prison term

[1] Unspecified statutory references are to the Penal Code.

enhancement imposed under section 667.5, because the conviction giving rise to his prior prison term had since been designated as a misdemeanor under section 1170.18. The trial court granted defendant's petition to designate his felony offense of possession of methamphetamine as a misdemeanor but denied his request for resentencing on the prior prison term enhancement. Defendant appealed, arguing the trial court erred when it declined to resentence him. For the reasons set forth below, we affirm.

BACKGROUND

1. **Case No. SS121036A (The Drug Case)**

On June 4, 2012, the Monterey County District Attorney's Office filed a complaint charging defendant with a count of felony possession of methamphetamine (former Health & Saf. Code, § 11377, subd. (a)) with a prior prison term enhancement (§ 667.5, subd. (b)) based on a prior conviction for burglary (§ 459), a misdemeanor count of being under the influence of a narcotic (Health & Saf. Code, § 11550, subd. (a)), and a misdemeanor count of possession of controlled substance paraphernalia (former Health & Saf. Code, § 11364.1, subd. (a)).

On June 11, 2012, defendant pleaded no contest to the count of felony possession of methamphetamine and admitted the prior prison term allegation. The court dismissed the remaining charges under section 1385.

2. **Case No. SS121332A (The Domestic Violence Case)**

On September 20, 2012, an information was filed charging defendant with a count of inflicting corporal injury on a spouse or cohabitant (§ 273.5, subd. (a)) with the allegation he personally inflicted great bodily injury on the victim (§ 12022.7, subd. (e)), two additional counts of inflicting corporal injury on a spouse or cohabitant (§ 273.5), a count of threatening death or great bodily injury (§ 422), and kidnapping (§ 207, subd. (a)). The complaint also alleged two out-on-bail enhancements (§ 12022.1) and two prior prison term enhancements (§ 667.5, subd. (b)) based on a prior burglary

conviction occurring on or about August 26, 2004 and a misdemeanor child endangerment conviction (§ 273a, subd. (b)).

On April 17, 2013, defendant pleaded no contest to two counts of inflicting great bodily injury on a spouse or cohabitant (§ 273.5, subd. (a)) and a count of threatening death or great bodily injury (§ 422). He also admitted the prior prison term enhancement. (§ 667.5, subd. (b).)

3. **Sentencing in the Drug Case and the Domestic Violence Case**

On June 14, 2013, the trial court sentenced defendant to two years for his felony conviction of possession of methamphetamine in the drug case, to be served concurrently with his sentence in the domestic violence case. Defendant was awarded a total of 669 days of custody credit, consisting of 335 actual custody credit and 334 days of conduct credit.

That same day, the trial court sentenced defendant to a total term of six years eight months in prison for the domestic violence case. He was awarded 310 days of custody credit, consisting of 155 actual days and 155 days of conduct credit.

4. **Proposition 47 Petitions**

On December 3, 2014, defendant filed a petition seeking to have his felony conviction for possession of methamphetamine in the drug case designated as a misdemeanor under section 1170.18, subdivisions (f) and (g). The People did not object to the petition, noting that although documents from the California Department of Corrections and Rehabilitation indicated defendant was still serving a sentence for that conviction, it appeared that his custody credits "should have covered the sentence." On February 3, 2015, the court granted defendant's petition under section 1170.18, subdivisions (f) and (g).

Also on December 3, 2014, defendant filed petitions seeking to designate two of his prior burglary convictions as misdemeanors under section 1170.18, subdivisions (f)

and (g). These two convictions were the basis for the prior prison term enhancements alleged in both the drug case and the domestic violence case. On February 2, 2015, the trial court granted defendant's petitions and designated the two burglary convictions as misdemeanors.

On February 19, 2015, defendant filed a petition seeking to have his sentence for the domestic violence case recalled under section 1170.18, subdivisions (b) and (d). Defendant argued the sentence included a one-year prior prison term enhancement that was based on a burglary conviction that had since been reduced to a misdemeanor under Proposition 47. The People opposed the petition, claiming Proposition 47 does not apply to status enhancements. On April 23, 2015, the court denied the petition.

On October 28, 2015, defendant, through his defense counsel, requested resentencing in both the drug case and the domestic violence case. Defendant argued resentencing was necessary, because he was sentenced to an additional year based on his prison prior for the burglary offense, which had since been reduced to a misdemeanor under Proposition 47.

The court held a hearing on the matter on November 17, 2015. During the hearing, the court remarked that the prior prison term enhancement was not imposed in the drug case, because the enhancement alleged was the same as the one alleged in the domestic violence case. The court then stated: "There was a prior prison term admitted in the case ending 036 [the drug case]. That case was run concurrent. He also admitted a prior prison term originally in the case ending 332 [the domestic violence case]. That prior prison term remains. So on three of his felonies, all of those are reduced to misdemeanors pursuant to Prop 47. No additional time was imposed for the prior prison term admitted in the case that was reduced to the misdemeanor. But the original sentence, which is all imposed in 332 [the domestic violence case], everything else was

concurrent, he admitted a prior prison term, received one year. That entire sentence remains unchanged, and the Court will deny the petition in regards to that."[2]

Defendant appealed.

DISCUSSION

On appeal, defendant argues the trial court erred on November 17, 2015, when it declined to resentence him in both the drug case and the domestic violence case. Defendant also argues a felony that has since been reduced to a misdemeanor under Proposition 47 cannot serve as the basis of a prior prison term enhancement under section 667.5.

1. *Trial Court's Denial of Resentencing in Both Cases*

Defendant claims that because his felony offense for possession of methamphetamine in the drug case was reduced to a misdemeanor under Proposition 47, he was entitled to resentencing in that case. And, upon resentencing him in the drug case, the court should have considered the joint sentence that was imposed in the domestic violence case and should have stricken the prior prison term enhancement. We find the trial court did not err. Defendant filed an application with the trial court seeking to have his felony conviction in the drug case be designated as a misdemeanor under section 1170.18, subdivisions (f) and (g). By the time he filed the application, he had already completed serving his sentence in the drug case.[3] Therefore, the trial court had

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[2] The three felonies reduced to misdemeanors include the two prior burglary convictions and the possession of methamphetamine conviction in the drug case.

[3] This court requested supplemental briefing on the issue of whether defendant had in fact completed serving his sentence in his drug possession case although he was still incarcerated for his domestic violence case. We agree with defendant and the People that the trial court correctly designated defendant's felony conviction in the drug possession case to be a misdemeanor under the provisions of section 1170.18, subdivisions (f) and (g). As both parties point out, defendant's credits covered the majority of his two-year sentence. And "[a] concurrent term . . . begins on the day it is imposed and is not (continued)

no jurisdiction to resentence him in the drug case, and, correspondingly, the court had no jurisdiction to resentence him in the domestic violence case.

a. **Overview of Proposition 47**

Proposition 47 enacted section 1170.18, which sets forth two separate procedures for eligible defendants to petition for relief with the trial court. Section 1170.18, subdivision (a) applies to those persons who are "currently serving a sentence for a conviction" that would have been a misdemeanor if Proposition 47 had been in effect at the time of their offense. If the court determines a petitioner satisfies the criteria provided under section 1170.18, subdivision (a), the court shall recall the petitioner's sentence and resentence him or her as a misdemeanant unless the court determines that doing so would pose an unreasonable risk of danger to public safety. (§ 1170.18, subd. (b).)

Section 1170.18, subdivision (f) applies to those persons who have already completed their sentence for a conviction who would have been guilty of a misdemeanor had Proposition 47 been in effect at the time of their offense. These individuals may file an application with the trial court under section 1170.18, subdivision (f) to have their felony convictions redesignated as misdemeanors. Under section 1170.18, subdivision (g), if the petitioner's application satisfies the criteria set forth under subdivision (f), the court "shall designate the felony offense or offenses as a misdemeanor." (§ 1170.18, subd. (g).) Subdivisions (f) and (g) do not mention resentencing.

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postponed." (*People v. Bruner* (1995) 9 Cal.4th 1178, 1182, fn. 3.) Additionally, since defendant was sentenced to concurrent terms, his concurrent terms did not merge into a single aggregate term as would have been the case if he had been sentenced consecutively. (*In re Reeves* (2005) 35 Cal.4th 765, 773.)

Based on the plain language of section 1170.18, defendants who have already completed their sentences that seek to have their felony convictions redesignated as misdemeanors are not entitled to *resentencing*. (§ 1170.18, subds. (f) & (g).) It is only those defendants who are *currently* serving a sentence for a qualifying conviction that may petition for recall and resentencing under Proposition 47. (*Id*., subds. (a) & (b).) Subdivisions (a) and (b)'s recall and resentencing procedure create a narrow exception to the general common law rule that "a trial court is deprived of jurisdiction to resentence a criminal defendant once execution of the sentence has commenced." (*People v. Karaman* (1992) 4 Cal.4th 335, 344.)

b. **Defendant Is Not Entitled to Resentencing in Both Cases**

Here defendant had his felony conviction in the drug possession case redesignated as a misdemeanor under section 1170.18, subdivisions (f) and (g). He argues that he is entitled to resentencing in both the drug possession case and the domestic violence case. We disagree.

We find the discussion in *People v. Vasquez* (2016) 247 Cal.App.4th 513 (*Vasquez*) to be instructive. In *Vasquez*, the defendant was convicted of felony petty theft with a prior in 1995 and was sentenced to 16 months in state prison. (*Id*. at p. 516.) In 2015, the defendant petitioned to have his petty theft conviction reduced to a misdemeanor under section 1170.18, subdivisions (f) and (g). (*Vasquez, supra*, at p. 517.) The defendant submitted a proposed order vacating the original 16-month sentence. (*Ibid*.) The trial court found the defendant eligible to have his felony designated as a misdemeanor under Proposition 47, but concluded it could not change his sentence since his sentence had already been completed. (*Ibid*.)

On appeal, the defendant argued the trial court erred when it refused to vacate his sentence. (*Vasquez, supra*, 247 Cal.App.4th at p. 517.) The *Vasquez* court affirmed the trial court's decision, finding that nothing in section 1170.18, subdivisions (f) and (g)

required a court to vacate a sentence or permitted a court to resentence a defendant for a conviction after he or she has already completed a sentence. (*Vasquez, supra,* at pp. 518-519.)

We agree with *Vasquez*'s discussion of section 1170.18 and find it is relevant to our analysis. As noted in *Vasquez*, section 1170.18, subdivisions (f) and (g) do not mention resentencing at all. (*Vasquez, supra*, 247 Cal.App.4th at p. 519.) In contrast, section 1170.18, subdivisions (a) and (b) expressly discuss resentencing. "Because resentencing is expressly addressed in subdivisions (a) and (b) of section 1170.18, it is appropriate to conclude that resentencing was intentionally excluded from subdivisions (f) and (g). Inserting additional language into a statute violates ' "the cardinal rule of statutory construction that courts must not add provisions to statutes" ' because ' "a court must not 'insert what has been omitted' from a statute." ' " (*Vasquez, supra,* at p. 519.) In this instance, the statutory language is clear. Subdivisions (f) and (g) of section 1170.18 do not authorize the trial court to alter or resentence a completed sentence.

Defendant, however, argues the court had jurisdiction to resentence him in the drug case even if resentencing was not expressly authorized by subdivisions (f) and (g) of section 1170.18. He claims his two-year sentence for drug possession constituted an unauthorized sentence, because it has since been reduced to a misdemeanor that is now punishable by a maximum of one year in jail (Health & Saf. Code, § 11377, subd. (a)). He also argues the imposition of concurrent terms in the drug case and the domestic violence case did not obviate the need for resentencing on the unauthorized two-year sentence in his drug case.

We disagree with defendant's characterization of his two-year sentence as an unauthorized sentence. "[A] sentence is generally 'unauthorized' where it could not lawfully be imposed under any circumstance in the particular case." (*People v. Scott*

(1994) 9 Cal.4th 331, 354.) When the trial court initially imposed the two-year sentence, defendant stood convicted of a *felony*. At that time, his sentence was lawfully imposed under the circumstances of his case. Defendant has since completed his sentence. The later reduction of the felony to a misdemeanor by Proposition 47 does not render this original sentence unauthorized.

For the same reasons, we reject defendant's claim that the abstract of judgment should be set aside because it is void on the face of the record. (*People v. Amaya* (2015) 239 Cal.App.4th 379, 386.) " ' "A judgment is void on its face if the court which rendered the judgment lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant." ' " (*Ibid*.) Although the abstract of judgment reflects defendant was sentenced to a two-year term for his conviction of possession of methamphetamine under former Health and Safety Code section 11377, subdivision (a), this does not render the abstract of judgment void on its face. Defendant's sentence comported with the law at the time of his offense, and the court did not exceed its jurisdiction during sentencing. The later designation of the felony as a misdemeanor does not transform the sentence, which he has already completed, into one that is void on its face.

Defendant claims the language of section 1170.18, subdivision (k) supports his position that resentencing is necessary even for those defendants who have already completed their sentence. Subdivision (k) of section 1170.18 states: "Any felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, *except that such resentencing* shall not permit that person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6." (Italics added.)

Although section 1170.18, subdivision (k) uses the term "resentencing," it distinctly refers to convictions that are recalled and resentenced under section 1170.18, subdivision (b) *or* those convictions designated as misdemeanors under subdivision (g). Logically, subdivision (k)'s reference to resentencing is to those convictions that are recalled and resentenced under subdivision (b), not to those convictions designated as misdemeanors under subdivision (g). (*Vasquez*, *supra*, 247 Cal.App.4th at p. 519.)

Thus, the court did not err when it declined to resentence defendant in the drug case. Although defendant requested resentencing, the trial court had no jurisdiction to alter a sentence that had already been completed.

Resentencing is also not required in defendant's domestic violence case. Defendant argues that he is entitled to resentencing in that case, because he properly brought a motion for resentencing in the drug case and upon resentencing the court should have considered the joint sentencing imposed on both the drug case and the domestic violence case. First, as we have already determined, defendant was *not* entitled to resentencing in the drug case.

Second, defendant's claim that the court should have reconsidered his joint sentence is flawed. Recent appellate court decisions have held that "where a petition under section 1170.18 results in reduction of the conviction underlying the principal term [in an aggregate sentence] from a felony to a misdemeanor, the trial court must select a new principal term and calculate a new aggregate term of imprisonment, and in doing so it may reconsider its sentencing choices." (*People v. Roach* (2016) 247 Cal.App.4th 178, 185.) In *Roach*, the defendant was sentenced in September 2014 to an aggregate term of four years four months in state prison, composed of a principal term of three years for possession of methamphetamine, two consecutive eight-month sentences for unlawful possession of a firearm and receiving stolen property, and a concurrent term of three years for reckless driving. (*Id*. at p. 182.) In December 2014, the defendant petitioned

the court seeking to have his convictions for possession of receiving stolen property resentenced as misdemeanors. (*Ibid*.) The court granted the petition for resentencing, selected the reckless driving count as the new principal term, and resentenced the defendant to an aggregate term of four years four months in prison, the same aggregate term originally imposed. (*Id*. at p. 183.)

A case that is more closely aligned to the facts of defendant's case is the recent decision by the Fourth Appellate District in *People v. Cortez* (2016) 3 Cal.App.5th 308 (*Cortez*). In *Cortez*, the defendant was sentenced in 2014 to 16 months in prison for possessing methamphetamine, and two concurrent six-month sentences for misdemeanor counts of possessing drug paraphernalia and being under the influence of methamphetamine. (*Id*. at p. 311.) The defendant filed a petition for resentencing in 2015 under section 1170.18, subdivisions (a) and (f). The court denied the petition for resentencing under subdivision (f), finding that defendant was still under supervision and was therefore still serving his sentence. It then granted the petition under subdivision (a) and resentenced the defendant to a term of 364 days in jail for possession of methamphetamine, a consecutive term of 129 days in jail for possessing drug paraphernalia, and 129 days concurrent for being under the influence of methamphetamine, for a total term of 494 days in jail. (*Cortez*, *supra*, at p. 311.) On appeal, the Fourth District concluded the trial court properly reconsidered whether to impose concurrent or consecutive terms on the aggregate misdemeanor sentences. (*Id*. at p. 312.) The court, however, erred when it imposed a punishment exceeding the original sentence. (*Ibid*.)

In *Roach*, the defendant was, at the time, *currently serving* sentences for felony convictions that would have been misdemeanors had Proposition 47 been in effect at the time of his offense. In other words, subdivision (a) of section 1170.18 applied. Similarly, although *Cortez* is factually more similar to the circumstances of defendant's

case, it is still distinguishable. There, the trial court also determined the defendant was *currently serving* a sentence and was therefore eligible for relief under section 1170.18, subdivision (a). Neither of these cases dealt with the exact issue here; that is, whether a defendant who has already *completed* a concurrent term for an eligible felony conviction is entitled to resentencing under subdivision (f) of section 1170.18.

Furthermore, defendant is not separately entitled to resentencing in the domestic violence case under section 1170.18, subdivisions (a) and (b), because his felony convictions in the domestic violence case (two counts of inflicting great bodily injury on a spouse or cohabitant (§ 273.5, subd. (a)) and a count of threatening death or great bodily injury (§ 422) are *not* eligible for Proposition 47 relief.

In sum, the court did not err when it declined to resentence defendant in either the drug case or the domestic violence case.

2. *The Prior Prison Term Enhancement*

Next, defendant argues the trial court erred when it failed to strike the prior prison term enhancement (§ 667.5) imposed in the domestic violence case. He claims the enhancement must be stricken, because he had successfully petitioned to have the felony burglary conviction underlying the enhancement redesignated as a misdemeanor under section 1170.18, subdivisions (f) and (g). We find the court did not err when it declined to strike the prior prison term enhancement imposed in the domestic violence case.

Preliminarily, defendant argues he is not applying Proposition 47 retroactively when making this claim, because he was entitled to resentencing in both the drug case and the domestic violence case. And, since he was entitled to resentencing in both cases, the court should have considered at the time of his resentencing whether his prior prison sentence qualified as a prior prison term enhancement under section 667.5.[4]

[4] The California Supreme Court has granted review to several cases analyzing whether Proposition 47's designation of felonies as misdemeanors affects sentencing (continued)

Subdivision (k) of section 1170.18 provides that felony convictions that are recalled or resentenced under subdivision (b) or designated as misdemeanors under subdivision (g) "shall be considered a misdemeanor for all purposes." Therefore, defendant maintains the burglary conviction should have been considered a misdemeanor upon resentencing and could not properly form the basis of the enhancement imposed under section 667.5.

Defendant's argument on this point is premised on his mistaken claim that he was entitled to resentencing in both cases. As we have already determined *ante*, defendant was *not* entitled to resentencing in either the drug case or the domestic violence case.

Having reached the conclusion that defendant was not entitled to resentencing on both the drug case and the domestic violence case, we find defendant's reliance on *People v. Flores* (1979) 92 Cal.App.3d 461 (prior conviction for violation of Health & Saf. Code, § 11357 could not form basis of enhancement under § 667.5, because Health & Saf. Code § 11357 was amended in 1975 to be a misdemeanor), *In re Acker* (1984) 158 Cal.App.3d 888 (prison sentence recalled under § 1170, subd. (d) could not form basis of prior prison term enhancement under § 667.5), *People v. Park* (2013) 56 Cal.4th 782 (felony reduced to a misdemeanor under § 17, subd. (b) cannot be basis of prior serious felony conviction enhancement under § 667, subd. (a)) (*Park*), and *People v. Culbert* (2013) 218 Cal.App.4th 184 (felony reduced to a misdemeanor pursuant to § 17, subd. (b) cannot be basis of prior serious felony conviction enhancement under § 667, subd. (a)) to be misplaced.

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enhancements or allegations. (*People v. Ruff* (2016) 244 Cal.App.4th 935, review granted May 11, 2016, S233201; *People v. Carrea* (2016) 244 Cal.App.4th 966, review granted April 27, 2016, S233011; *People v. Williams* (2016) 245 Cal.App.4th 458, review granted May 11, 2016, S233539; *People v. Valenzuela* (2016) 244 Cal.App.4th 692, review granted March 30, 2016, S232900; *People v. Acosta* (2016) 247 Cal.App.4th 1072, review granted Aug. 17, 2016, S235773.)

All of the aforementioned cases concern the *prospective* application of a reduction of an offense to a misdemeanor or a recall of a prior sentence. Although defendant insists his case similarly involves the prospective application of Proposition 47, in order for him to obtain relief, Proposition 47's designation of the prior burglary conviction as a misdemeanor would have to have *retroactive* effect. Defendant is effectively challenging the imposition of a prior prison term enhancement that was imposed and became final before the effective date of Proposition 47.[5]

Defendant does not otherwise advance any arguments that explain how or if the redesignation of his burglary conviction to a misdemeanor retroactively invalidates the prior prison term enhancement imposed in the drug case. Indeed, in *Park*, our Supreme Court considered an analogous scenario where a felony conviction used as a five-year sentencing enhancement under section 667, subdivision (a) had since been reduced to a misdemeanor by section 17, subdivision (b). *Park* noted that "[t]here is no dispute that . . . defendant would be subject to the section 667[, subdivision] (a) enhancement had he committed and been convicted of the present crimes before the court reduced the earlier offense to a misdemeanor." (*Park*, *supra*, 56 Cal.4th at p. 802.) Akin to the hypothetical situation contemplated in *Park*, we believe there can be no reasonable dispute that defendant was properly subjected to the prior prison term enhancement since he was convicted and sentenced before the conviction underlying the enhancement was reduced to a misdemeanor under Proposition 47.

Retroactive application of Proposition 47 in this context would also contravene the settled principle that no part of the Penal Code is "retroactive, unless expressly so

[5] Voters passed Proposition 47 on November 4, 2014. Proposition 47 therefore became effective the following day on November 5, 2014. (Cal. Const., art. 2, § 10, subd. (a) [statutes enacted by initiative take effect day after election unless measure provides otherwise].) Defendant was sentenced in both the drug case and the domestic violence case on June 14, 2013.

declared." (§ 3.) Section 1170.18 is silent on whether Proposition 47 can be properly applied to invalidate enhancements that have been imposed in cases that became final before the passage of Proposition 47.

Furthermore, defendant is not separately able to obtain resentencing on his prior prison term enhancement imposed in the domestic violence case, even though the conviction underlying the enhancement has since been reduced to a misdemeanor under section 1170.18, subdivision (f). Section 1170.18, subdivision (a) expressly provides that recall and resentencing is available to those persons "serving a sentence for a *conviction*" (italics added) that would have been guilty of a misdemeanor if Proposition 47 had been in effect. It does not by itself apply to sentence enhancements. Without a procedure that allows defendant to request resentencing on the enhancement, he is not entitled to have a resentencing hearing on the enhancement and have the trial court either vacate or strike the enhancement.

The other arguments advanced by defendant are inapplicable to the circumstances of his case, because they pertain to the *prospective* application of a redesignation of an enhancement's underlying conviction by Proposition 47. For example, in the context of prospective application of Proposition 47, defendant claims that imposing the prior prison enhancement would violate the intent of Proposition 47. The rationale behind his argument is that punishing a defendant for prior offenses as if those convictions had been felonies when they had been deemed by the electorate to be neither serious, violent, nor felonious, would contradict the electorate's purpose when enacting Proposition 47. This argument has no bearing on whether the *retroactive* application of Proposition 47 to sentence enhancements would contravene the electorate's intent when enacting the initiative.

In sum, section 1170.18 does not offer defendant a mechanism to request resentencing on the prior prison term enhancement imposed under section 667.5.

Accordingly, his claim that he is entitled to resentencing on the enhancement must be rejected.[6]

DISPOSITION

The order is affirmed.

[6] Based on our conclusion, we need not address the People's alternative argument that if defendant is entitled to resentencing on his prior prison enhancement, the People should be given the opportunity to withdraw from the negotiated plea agreement and reinstate previously dismissed counts.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.

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